

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

74-1292

B
PL

UNITED STATES OF AMERICA, APPELLEE

- v. -

CONSTANCE ROGERS, APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FROM THE EASTERN DISTRICT OF NEW YORK
HONORABLE ORRIN G. JUDD, JUDGE, PRESIDING

APPELLANT'S REPLY BRIEF

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Of Counsel



IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

Docket No.
74-1292

CONSTANCE ROGERS,

Appellant.

APPELLANT'S REPLY BRIEF

STATEMENT

This brief is submitted in reply to the Government's brief in connection with the appeal herein.

In its answering brief , the Government contends, under Point II thereof, that the defendant waived any question to venue. The Government concedes that they failed to prove venue as to Counts Two and Three, but that as the defendant went to trial and testified in her own behalf she effectively waived her rights as to proper venue. The Government also found it strange that defendant's counsel became aware of the venue problem at the conclusion of the charge

and only after the court had read the indictment.

(Government's Brief 14-15)

What the Government is asking this Court to hold is that the defendant is to be aware of all the possible legal ramifications and significance of the locations in Counts Two and Three being in New York County. There can be no doubt that the defendant read the indictment prior to trial and that numerous discussions were had between defendant and her counsel. However, Counts Two and Three stated the location as "1501 Broadway, New York City". Even if the defendant herself knew that said location was in New York County, is she also held to the burden of knowing whether her attorney was also cognizant of this fact or bringing such fact to his attention? It could only have been assumed by defense counsel from a reading of the indictment that the "Broadway" referred to in Counts Two and Three were either in Queens or Brooklyn. Is it the responsibility of the Appellate Court, or the trial court to wonder what the defendant or her attorney knew or should have known? Can the Government say when a certain fact should have first come to the attention of defense counsel? The Government contends, and the defendant

concedes, that waiver is the intentional relinquishment or abandonment of a known right or privilege. Johnson v. Zerbst, 304 U.S. 458, 464. However, it is respectfully submitted that the defendant did not know, nor should she have known, of her constitutional right to be tried in the district in which the crime was committed. Furthermore, defendant's counsel did not knowingly waive this right, even though the Government's witnesses testified that counts Two and Three took place in New York County, because a timely motion was made by defense counsel as soon as the defect came to his attention.

From the foregoing it is obvious that the question of proper venue was not waived and that as the Government failed to prove proper venue in Counts Two and Three, the judgment of conviction should be reversed.

Respectfully Submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

v.

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State of New York)
County of New York) SS.:

MARIANNE BOBICK, being duly sworn, deposes
and says:

That your deponent is over the age of 18,
not a party to this action and resides at 149 West 72nd
Street, New York, New York.

That on the 19th day of June, 1974 deponent served the within reply brief upon Kirby W. Patterson, Esq. Criminal Division, Room 2318, Washington, D.C. 20530, by depositing a true copy of same enclosed in a post paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

James Bond

Sworn to before me this

19th day of June, 1974 BOB A. KRAMER
Robert Kramer Notary Public, State of New York
No. 44-7352950
Qualified in Rockland County
Certificate filed in New York County
Commission Expires March 30, 1976